

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Sandra J. Wymore,

Complainant,

v.

Empak, Inc. and John Garland,

Respondents.

ORDER ON MOTION  
FOR RECONSIDERATION

On March 23, 1995, the Respondents filed a Motion for Reconsideration of the Discovery Order dated March 16, 1995. On March 29, 1995, the Complainant filed a Response to the Motion for Reconsideration. The Respondents also filed a request for clarification on March 29, 1995.

Donna L. Roback, Esq. and John J. Steffenhagen, Esq., of the firm of Larkin, Hoffman, Daly & Lindgren, Ltd., 1500 Norwest Financial Center, 7900 Xerxes Avenue South, Bloomington, Minnesota 55431, represented the Respondents. Marcia S. Rowland, Esq., of the firm of Standke, Greene & Greenstein, Ltd., 17717 Highway 7, Minnetonka, Minnesota 55345, represented the Complainant.

Based upon the written arguments submitted and upon all of the filings in this case and for the reasons set out in the Memorandum which follows:

IT IS HEREBY ORDERED:

1. Any documents claimed by the Complainant to be privileged shall be identified by date, author, addressee, copy address, and a general description of the subject matter or content.
2. The Complainant shall produce all documents submitted to the Department of Human Rights regarding the Respondents.
3. The Respondents' Motion to Reconsider the Order requiring production of its annual reports for 1992-94 is granted, provided that Respondent Empak, Inc. stipulates that its financial resources are sufficient to support an award of punitive damages, a civil penalty,

litigation and hearing costs, or the trebling of compensatory damages if such awards are determined to be appropriate. Alternatively, the Respondents may produce the annual reports under the terms of the Protective Order and any financial information to be submitted into the record will be contained in a sealed exhibit.

4. Respondents production of charges and complaints of discrimination against Empak, Inc. may be limited to its Minnesota plants.

Dated this 30th day of March, 1995

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GEORGE A. BECK  
Administrative Law Judge

MEMORANDUM

The Respondents have asked that the Complainant be required to produce a privilege log and to produce documents submitted to the Department of Human Rights as has been required of the Respondents. The request is appropriate. A privilege log has apparently been produced with the Complainant's response to this motion. Additionally, it seems clear that the discrimination questionnaire submitted by the Complainant and a letter sent to the Department to meet the arguments of the Respondents may contain relevant evidence and are discoverable.

The Administrative Law Judge was unaware that Empak, Inc. was a private company whose annual reports were not public. Protection of this information is appropriate; however, it is also relevant to damages issues. Accordingly, Respondent Empak, Inc. may either stipulate on the damage issues or produce the information subject to the Protective Order. Any financial information necessary to the record could be placed in a sealed exhibit and the final Order in this matter could contain only generalized findings as to financial condition or financial hardship with a reference to the sealed exhibit.

The Respondents have also requested a clarification on the scope of the required production of charges and complaints of discrimination. In the case of an employer with facilities in a number of jurisdictions, it is often appropriate to limit production of this sort of information to avoid the request becoming burdensome. The most relevant evidence would be that related to supervisors and managers in Minnesota.

It is recommended that the energy devoted by counsel to criticizing each other's actions during discovery be redirected towards bringing this matter to an expeditious resolution.

G.A.B.